

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 816 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SUSHILABEN M DANGARWALA

Versus

JASWANTLAL N THAKKAR

Appearance:

MR MC BHATT for applicant

MR MAULIN R RAVAL for Respondent No. 1

MR PV HATHI for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 18/10/1999

ORAL JUDGEMENT

1. Applicant, who is the original auction purchaser, has filed this Civil Revision Application under Section 115 of the Code of Civil Procedure, challenging the judgment and order dated July 8, 1993, passed by the learned Judge, Court No.23, City Civil Court, Ahmedabad, below Applications Exh.88, 89, and 101 in Execution Proceedings No.506 of 1968.

2. The applicant is the auction purchaser who filed abovestated applications in the execution proceedings with prayer to confirm the auction sale with regard to properties bearing Survey No.1070 and Survey No.1715 of Khadia Ward, Ahmedabad, and with further prayer to issue certificate that the applicant is the purchaser of the suit property in the auction sale.

3. The respondents contested the application filed by the applicant, inter alia, contending that the application filed by the applicant was not maintainable in law. It was admitted by the Official Receiver, respondent No.2 herein, that the applicant had purchased the suit property in auction sale of Rs.1,20,000/-. However, it was submitted that, at the time when the applicant had purchased the suit property, respondent No.1 had already instituted Insolvency Petition No.15 of 1968. It is further submitted that, as per the provision of Section 28(7) of the Provincial Insolvency Act, the properties of insolvent vest in the Official Receiver and as the Officer Receiver was not made a party to the execution proceedings, the application deserves to be rejected.

4. Heard learned advocates appearing for the parties. Taking into consideration the contentions raised by the learned advocates representing the applicant and the respondents, in my view, no error is committed by the learned Trial Judge and no ground is made out for interference of this Court under Section 115 of the Code of Civil Procedure. However, learned advocate for the applicant, Mr. M.C. Bhatt, has prayed that this Civil Revision Application may be permitted to be withdrawn and necessary directions be given to the Official Receiver to return amount of Rs.1,20,000/deposited by the applicant in the auction sale. Learned advocate, Mr. P.V. Hathi, on instructions from the Official Receiver, respondent No.2 herein, has made statement at the Bar that Rs.1,20,000/deposited by the applicant in the Execution Proceedings Nos. 506 of 1968, has been invested by the Registrar, City Civil Court, Ahmedabad, under Term Deposit Receipt No.152105, which matures on June 11, 2000. The Registrar, City Civil Court, Ahmedabad, is, therefore, directed to encash Term Deposit Receipt No.152105 prematurely and pay amount of Rs.1,20,000/- with accrued interest thereon to the applicant within eight weeks from today.

5. With this direction, this Civil Revision Application stands disposed of as withdrawn. Rule is

discharged with no order as to costs. Direct service is permitted.

(swamy)